

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN D. ORR,

Petitioner,

vs.

WARDEN DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:15-cv-00219-RFB-PAL

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. On the face of the petition petitioner indicates that he filed a previous federal habeas petition challenging this judgment of conviction, case no. C-158563, which he states was dismissed for procedural reasons (ECF #1-1, p. 2). In fact, this court's docket reflects that petitioner has previously filed at least two habeas petitions challenging this judgment of conviction.

28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

1 On June 16, 2004, the habeas petition in case no. 3:02-cv-00405-ECR-RAM (challenging the
2 same judgment of conviction) was dismissed with prejudice because the claims in the petition were
3 procedurally defaulted and petitioner failed to show that either cause and prejudice existed to excuse
4 the procedural default, or that a fundamental miscarriage of justice would result if his procedural default
5 was not excused (3:02-cv-00405-ECR-RAM, ECF #27). Judgment was entered on June 17, 2004 (ECF
6 #29).

7 On October 19, 2012, the habeas petition in case no. 3:12-cv-00436-RCJ-VPC (challenging the
8 same judgment of conviction) was dismissed with prejudice as second and successive because petitioner
9 presented no proof that he had obtained leave from the Ninth Circuit Court of Appeals to file a
10 successive petition, and judgment was entered (3:12-cv-00436-RCJ-VPC, ECF #s 3, 4).¹

11 The instant petition is, therefore, also a successive petition, which requires petitioner to seek and
12 obtain leave of the Ninth Circuit Court of Appeals to pursue. *See* 28 U.S.C. § 2244(b)(3) et seq. The
13 petitioner has indicated on the face of the instant petition that he has not obtained leave to file a
14 successive petition from the Court of Appeals. Accordingly, the petition shall be dismissed with
15 prejudice as a successive petition.

16 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition (ECF
17 #1-1).

18 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** with prejudice as a successive
19 petition.

20 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma pauperis* (ECF
21 #1) is **DENIED** as moot.

22 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

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28 ¹ The Court of Appeals denied a certificate of appealability (case no. 13-15123).

1 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and
2 close this case.

3 DATED this 29th day of June, 2015.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE